

Before the
Administrative Hearing Commission
State of Missouri



MISSOURI STATE BOARD OF NURSING,)	
)	
Petitioner,)	
)	
vs.)	No. 12-1853 BN
)	
DIANA BLEIMEHL,)	
)	
Respondent.)	

DECISION

Respondent Diana Bleimehl, a registered professional nurse, is subject to discipline against her Missouri license, because of disciplinary action taken against her nursing license in Illinois upon grounds for which revocation or suspension is authorized in Missouri.

Procedure

On October 10, 2012, Petitioner Missouri State Board of Nursing filed a complaint with this Commission seeking a determination that cause exists to discipline Ms. Bleimehl's Missouri nursing license. Ms. Bleimehl was served with a copy of the complaint on October 19, 2012.

We held a hearing on August 1, 2013. Ms. Bleimehl represented herself. Ian Hauptli represented the Board. The case became ready for decision on October 22, 2013, when the time for filing the last written argument expired.¹

¹ Commissioner Nimrod T. Chapel presided over the hearing of August 1, 2013. His term expired in September 2013. Having read the full record including all the evidence, and

Findings of Fact

1. Diana Bleimehl holds a Certificate of Registration as a registered professional nurse, issued by the Department of Financial and Professional Regulation of the State of Illinois. She has held an Illinois Certificate of Registration since 1981.

2. On January 4, 2010, Illinois authorities received information that Ms. Bleimehl was diverting medications for her personal use from the Illinois Veterans Home in Quincy, Illinois, where she was employed as a registered nurse. The Illinois authorities also received information that Ms. Bleimehl had reported to work while intoxicated in December 2009 and January 2010.

3. Represented by an attorney, Ms. Bleimehl entered into and signed a consent order with the Illinois authorities in April 2011. She stipulated that the information the Illinois authorities received—if true—would constitute grounds for revocation, suspension, or other discipline of her nursing license. She further stipulated that the consent order provides for the imposition of “disciplinary measures[.]”² Pursuant to the consent order, Ms. Bleimehl’s Illinois license was suspended for three months and then placed on indefinite probation for a minimum of three years. During the probation, she is subject to work and other restrictions related to her practice of nursing.

4. Ms. Bleimehl is licensed as a registered professional nurse by the Missouri State Board of Nursing (the Board). Her Missouri license is current and active and was so at all times relevant herein.

personally considered the parties’ arguments and briefing, Commissioner Alana M. Barragán-Scott renders the decision pursuant to § 536.080.2, RSMo (2000). *See also Angelos v. State Bd. of Regis. for the Healing Arts*, 90 S.W.3d 189, 193-194 (Mo. App. S.D. 2002) (approving mechanism provided by § 536.080.2 for a commissioner other than the one who heard the case to render decision).

² Petitioner’s Exhibit A, p. 5.

Conclusions of Law

We have jurisdiction. §§ 335.066 and 621.045, RSMo (Supp. 2012).

The Board bears the burden of proving, by a preponderance of the evidence, that cause exists to discipline a registered nurse's license. *See State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App. W.D. 2000). A preponderance of the evidence is evidence showing, as a whole, that "the fact to be proved [is] more probable than not." *Id.*

Here, the Board alleges cause exists to discipline Ms. Bleimehl's license under § 335.066.2(8):

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit or license required by sections 335.011 to 335.096 or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

(8) Disciplinary action against the holder of a license or other right to practice any profession regulated by sections 335.011 to 335.096 granted by another state, territory, federal agency or country upon grounds for which revocation or suspension is authorized in this state [.] [Emphasis added.]

We agree.

I. Disciplinary Action

The phrase "disciplinary action" as used in § 335.066.2(8) is not statutorily defined. But the same phrase appears in analogous physician and dentist disciplinary statutes and has been examined by the Missouri Court of Appeals in two cases we find instructive, *Bhuket v. State ex rel. Mo. Bd. of Regis'n for the Healing Arts*, 787 S.W.2d 882 (Mo. App. W.D. 1990), and *Holdredge v. Mo. Dental Board*, 261 S.W.3d 690 (Mo. App. W.D. 2008).

In *Bhuket*, the Missouri Board of Registration for the Healing Arts sought to discipline a physician under § 334.100.2(8), RSMo (Supp. 1984), because, the board alleged, he had been subject to “disciplinary action” by the Texas State Board of Medical Examiners, and the same bases for the Texas discipline constituted bases for discipline in Missouri. 787 S.W.2d at 883. In the Texas case, the Texas Board filed a complaint against the physician and heard evidence on the complaint, but the parties settled before the case was submitted. *Id.*

The Court of Appeals described Missouri’s statutory scheme for discipline of physicians as a remedial one, intended to protect the public health and welfare, and concluded it should “be construed with a view to suppression of wrongs and mischiefs undertaken to be remedied.” *Id.* at 885. The court also explained that the phrase “disciplinary action” was not technical, and so the words should be understood in their “plain, ordinary and usual sense.” *Id.* (citation omitted). The court specifically rejected defining the phrase by resort to a legal dictionary. *Id.* Instead, the court explained, the phrase “contemplates any censure, reprimand, suspension, denial, revocation, restriction or other limitation placed upon the license of a person subject to” the disciplinary provisions of law, and need not include a formal legal proceeding. *Id.*

The court concluded that the Texas proceedings resulting in the agreed restrictions placed on the physician’s license, including suspension and a limitation on the type of work the physician could perform if reinstated, constituted a disciplinary action for purposes of Missouri law, § 334.100.2(8). *Id.*

Holdredge is similar to *Bhuket*. In *Holdredge*, the Missouri Dental Board sought to discipline a dentist under § 332.321.2(8), RSMo (Supp. 2002), because, the board alleged, he had been subject to “disciplinary action” by the Wisconsin Dentistry Examining Board, and the same bases for the Wisconsin discipline constituted bases for discipline in Missouri. 261 S.W.3d at

694. In the Wisconsin case, the Wisconsin Board instituted an investigation and commenced disciplinary proceedings, then entered into a stipulation with the dentist, and entered an agreed final decision and order. *Id.* at 692. The dentist neither admitted nor denied the allegations. *Id.* But he agreed, and the Wisconsin Board ordered him, not to sexually harass any patient, employee, or co-worker; to notify the Wisconsin Board if he violated the agreement; and to pay the costs of the proceeding. *Id.*

Quoting *Bhuket*, the court in *Holdredge* explained that the phrase “disciplinary action” should be “construed with a view toward suppressing the wrongs undertaken to be remedied.” 261 S.W.3d at 694 (*Bhuket*, 787 S.W.2d at 885). The court considered the Wisconsin order a reprimand or censure, and the proceedings to have been in the nature of a disciplinary action for purposes of applying § 332.321.2(8). *Id.* at 694.

As noted, no appellate decision construes the phrase “disciplinary action” in the context of the disciplinary statute at issue here, § 335.066.2(8). But like the regulation of physicians and dentists, the purpose of the state’s regulation of the profession of nursing is protection of the public. *State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App. W.D. 2000). The remedial nature of § 335.066.2(8) leads us to conclude that the phrase “disciplinary action” as used therein should be construed broadly and in a non-technical fashion, with a view toward suppressing the wrongs to be remedied, as in *Bhuket* and *Holdredge*.

Ms. Bleimehl entered into a consent agreement with the Illinois authorities. Similar to the settlement scenario in *Bhuket*, and entry of an agreed order in *Holdredge*, she agreed that the information the Illinois authorities received, if true, would constitute grounds for the discipline of her Illinois nursing license. Her Missouri license was suspended for three months and then placed on probation for an indefinite period, but lasting at least three years, during which time

she is subject to work restrictions. Moreover, she stipulated that the provisions of the Illinois consent order to which she is subject are disciplinary measures.

We conclude Ms. Bleimehl was subject to a disciplinary action in Illinois.

II. Corresponding grounds for revocation or suspension in Missouri

The second part of the inquiry under § 335.066.2(8) requires the other jurisdiction's disciplinary action to have been taken upon grounds for which revocation or suspension is authorized in Missouri. We conclude that it was, here.

The purpose of permitting a Missouri licensing agency to rely on discipline taken by another state is a practical one: if the same grounds authorize discipline in Missouri, it makes little sense to require the agency to re-prove those grounds. *See Holmes v. Missouri Dental Bd.*, 703 S.W.2d 11, 12 (Mo. App. W.D. 1985). In *Holmes*, the appellate court examined § 332.321.2(8), RSMo (Supp. 1984), a statute that permitted the Missouri Dental Board to discipline a dentist's license when another state had disciplined the licensee, "upon grounds for which revocation or suspension is authorized in" Missouri. *Id.* at 11. In comparing grounds, the court did not require that the words and phrases used in the states' respective disciplinary statutes be identical to trigger application of § 332.321.2(8). Rather, it required that the words and phrases "mean substantially the same" thing and that they be "directed at" the same "range of misbehavior[.]" *Id.* at 12.

The disciplinary statute at issue in *Holmes* is essentially identical to the one at issue here, § 335.066.2(8). We therefore apply the *Holmes* test for comparison of the Illinois grounds with Missouri's. And we agree with the Missouri Board that, because it need not re-prove the conduct that forms the basis for discipline in Missouri, it simply need prove that the Illinois and Missouri grounds are substantially the same and directed at the same range of misbehavior.

Application of the Missouri law to the underlying facts that formed the basis for the Illinois discipline is not necessary.

According to the consent order, the Illinois authorities disciplined Ms. Bleimehl under 225 Ill.Comp.Stat. 65/70-5(b)(7), (8), (9), and (33):

(b) Grounds for disciplinary action include the following:

(7) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public, as defined by rule.

(8) Unlawful taking, theft, selling, distributing, or manufacturing of any drug, narcotic, or prescription device.

(9) Habitual or excessive use or addiction to alcohol, narcotics, stimulants, or any other chemical agent or drug that could result in a licensee's inability to practice with reasonable judgment, skill or safety.

(33) Prescribing, selling, administering, distributing, giving, or self-administering a drug classified as a controlled substance (designated product) or narcotic for other than medically accepted therapeutic purposes.

Subsections (8) and (33) of the Illinois law prohibit the unlawful taking and use of controlled substances. Missouri law, § 335.066.2(1) and (14), provides for discipline for these same actions.

The Illinois authorities also disciplined Ms. Bleimehl under subsection (7) of the Illinois law, which covers, among other things, unprofessional conduct of a character likely to harm the public. Missouri law, § 335.066.2(12), provides for discipline based on violation of professional trust or confidence. The phrase “professional trust or confidence” is not defined in Chapter 335, nor has the phrase been defined in the case law. Absent a statutory definition, the plain meaning of words used in a statute, as found in the dictionary, is typically relied on. *E&B Granite, Inc. v.*

Dir. of Revenue, 331 S.W.3d 314, 318 (Mo. banc 2011). The dictionary definition of “professional” is

of, relating to, or characteristic of a profession or calling...[;]... engaged in one of the learned professions or in an occupation requiring a high level of training and proficiency...[; and]...characterized or conforming to the technical or ethical standards of a profession or occupation....

WEBSTER’S THIRD NEW INT’L DICTIONARY UNABRIDGED 1811 (1986). “Trust” is

assured reliance on some person or thing [;] a confident dependence on the character, ability, strength, or truth of someone or something...[.]

Id. At 2456. “Confidence” is a synonym for “trust.” *Id.* at 475 and 2456. Trust “implies an assured attitude toward another which may rest on blended evidence of experience and more subjective grounds such as knowledge, affection, admiration, respect, or reverence[.]” *Id.* at 2456. Confidence “may indicate a feeling of sureness about another that is based on experience and evidence without strong effect of the subjective[.]” *Id.* Therefore, we define professional trust or confidence to mean reliance on the special knowledge and skills that professional licensure evidences. It may exist not only between the professional and his clients, but also between the professional and his employer and colleagues. *See Cooper v. Missouri Bd. of Pharmacy*, 774 S.W.2d 501, 504 (Mo. App. E.D. 1989). It is reasonable for patients and health care providers to rely on a nurse to properly exercise her professional duties, and in such manner as to do no harm. Section 335.066.2(12) provides for discipline based on violation of such professional trust or confidence.

We conclude that subsection (7) of the Illinois law, providing for discipline for unprofessional conduct of a character likely to harm the public, and subsection (12) of the

Missouri law, providing for discipline for violation of professional trust or confidence, are substantially the same and directed at the same range of misbehavior.

Finally, the Illinois authorities disciplined Ms. Bleimehl under subsection (9) of the Illinois law, covering the use of alcohol which could result in a licensee's inability to practice with reasonable judgment, skill or safety. Missouri law, § 335.066.2(1), allows for discipline based on “use ... of alcoholic beverage[s] to an extent that such use impairs a person’s ability to perform the work” of a nurse. We conclude that the statutes are substantially the same and directed at the same range of misbehavior.

Ms. Bleimehl argues that she did not actually divert medications for her personal use from her place of employment in Illinois, nor report to work while intoxicated. The Board responds that Ms. Bleimehl cannot deny or collaterally attack those facts. Neither party’s argument hits the mark. Generally, a “judicial admission is an act done in the course of judicial proceedings that concedes for the purpose of litigation that a certain proposition is true.... Judicial admissions are generally conclusive against the party making them.” *Moore Automotive Group, Inc. v. Goffstein*, 301 S.W.3d 49, 54 (Mo. banc 2009) (internal citations omitted). But the conclusive effect of such an admission does not carry over to a subsequent proceeding. The trier of fact may consider the admission; the parties are not bound to them in the subsequent proceeding. *Id.*

But here, whether Ms. Bleimehl actually diverted the medications for her personal use or reported to work in an intoxicated condition in Illinois is irrelevant. She stipulated in the Illinois consent order that such information, if true, constituted grounds for discipline, not that she actually committed the acts. And she was in fact disciplined in Illinois upon grounds that would also suffice as grounds for discipline in Missouri, as discussed above. Whether she committed

the underlying bad acts may be relevant at the next step the Board takes—determining the appropriate level of discipline—but it is not at the instant step.

Ms. Bleimehl’s nursing license was disciplined in another state upon grounds for which revocation or suspension is authorized in Missouri.

Summary

The Board has cause to discipline Ms. Bleimehl’s license under § 335.066.2(8).

SO ORDERED on November 26, 2013.

\s\ Alana M. Barragán-Scott
ALANA M. BARRAGÁN-SCOTT
Commissioner